

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4843 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge? No

BOSTAN-E BURHANI CLUB

Versus

CHIEF TOWN DEVELOPMENT OFFICER

Appearance:

Shri R.N.Shah, Advocate, for the Petitioners.

Shri T.H.Sompura, Assistant Government Pleader, as
instructed by Messrs Purnanand & Company, for
Respondents Nos.1 and 2.

Shri S.K.Zaveri, Advocate, for Respondent No.3.

Kum. V.P.Shah, Advocate, for Respondent No.4.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 04/03/96

ORAL JUDGEMENT

By means of this petition under Article 226 of the Constitution of India the petitioner has prayed for a writ of mandamus directing the respondents to act according to law, more particularly respondents Nos.1, 2 and 3, to arrange for grant of possession to the petitioners the portion of the land bearing survey No.276/A which came to be merged in the land reconstituted as final plot No.31 in Dohad Town Planning Scheme No.1 framed under the Gujarat Town Planning Urban Development Act, 1976 (the new T.P.Act for brief).

2. The facts giving rise to this petition move in a narrow compass. It appears that a Town Planning Scheme was prepared in the town of Dohad under the Bombay Town Planning Act, 1954 (the old T.P.Act for brief). It appears that it came to be sanctioned by the State Government by its Resolution passed on 19th May 1977 under section 51 (1) of the old T.P. Act and it has come into force with effect from 11th July 1977 as transpiring from one communication issued by and on behalf of the Dohad Municipality (respondent No.3 herein) on 21st October 1981 to the Chairman of petitioner No.1 Club. Its copy is at Annexure-A to this petition. It appears that pursuant thereto petitioner No.1 not only handed over possession of its land bearing survey No.275/E but also paid the required development charges in terms of the notice issued by and on behalf of respondent No.3 on 1st June 1978. Its copy is at Annexure-B to this petition. It appears that final plot No.31 in the aforesaid Town Planning Scheme came to be reconstituted after including therein some portion of the land bearing survey No.276/A belonging to respondent No.4 herein. It appears that possession of that part of the land belonging to respondent No.4 was not given to the petitioner. Thereupon, petitioner No.1 addressed one communication to the President of respondent No.3 Municipality on 21st June 1982 for granting to petitioner No.1 possession of the aforesaid portion of land from survey No.275/E belonging to respondent No.4 herein. Its copy is at Annexure-C to this petition. It appears that respondent No.3 Municipality could not accede to the request contained in the communication at Annexure-C to this petition. Petitioner No.1 thereupon moved this court by means of this petition under Article 226 of the Constitution of India for a writ of mandamus directing the respondents to act according to law for the purpose of giving possession of that part of the land bearing

survey No.276/A belonging to respondent No.4 as having merged in final plot No.31 in the aforesaid Town Planning Scheme. It may be mentioned at this stage that, during the pendency of this petition before this court, petitioner No.1 has sold reconstituted final plot No.31 in Dohad Town Planning Scheme No.1 to petitioners Nos.1 to 3. They have therefore been permitted to be joined as parties - petitioners by the order passed by this court on 26th February 1996 in Civil Application No.1504 of 1996.

3. It cannot be gainsaid that, on finalisation of the town planning scheme under the Town Planning Act, the authorities are required to follow the necessary procedure. By virtue of section 124 of the new T.P.Act, the Scheme prepared and finalised under the old T.P.Act is deemed to have been prepared and finalised under the new T.P. Act. In that view of the matter, section 69 of the new T.P.Act will govern the situation. It provides for power to enforce the scheme framed and finalised thereunder. The respondents, more particularly respondents Nos.1 to 3, are therefore directed to follow the procedure prescribed in section 69 of the new T.P.Act for the purpose of granting relief to the petitioners by enforcing Dohad Town Planning Scheme No.1 according to law.

4. In the result, this petition is accepted to the aforesaid extent. Respondents Nos.1 to 3 are directed to act according to law keeping in mind section 69 of the Gujarat Town Planning and Urban Development Act, 1976 for the purpose of enforcing and implementing Dohad Town Planning Scheme No.1 so far as giving possession of that portion of land from survey No.276/A as merged in reconstituted final plot No.31 in the aforesaid town planning scheme. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

#####